

ESTABLISHING A PILOT RESTORATIVE JUSTICE PROGRAM For Juveniles

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“I want those boys punished; they almost burned down my house,” an angry victim shouted into the phone. Two eight year old boys had wandered into the garage of an abandoned home. They opened a propane tank, poured gasoline on a teddy bear and set it on fire. Fortunately, a neighbor heard the explosion from the propane tank, looked into the garage, and seeing the fire, phoned the fire department. The flames quickly engulfed much of the garage and were headed for the house when the fire department arrived. The neighbor also saw two small boys running away.

After discussing the situation with us, the victim-homeowner decided to attend a mediation conference that included a law student mediator, a community co-mediator, a victim advocate, and the two offenders, both boys who were accompanied by a parent and case worker respectively. We conducted these conferences seriatim; the second was the most difficult. The offender, Danny, looked like an angel. He had brown curly hair and dark eyes rimmed with long lashes. He was tiny for his age. The victim was obviously moved by Danny’s appearance; his opening statement to Danny was less stern than his previous opening to the other offender. When the victim discussed the possibility of Danny spending time in juvenile detention, we learned that Danny was familiar with the system. His brother was already incarcerated. Also, Danny was accompanied to this conference not by a parent, but by his case worker.

The victim asked Danny many questions such as, “Why did you use the propane?” and “Why did you start the fire?” The victim wanted his garage repaired. We learned that Danny was in foster

¹ Clinical Professor, University of Florida Levin College of Law. I would like to thank Alyson Carrel whose vision and administrative skills developed the juvenile restitution program. I would also like to thank Professor Jonathan Cohen, ADR Director Robin Davis, Program Manager Bruce Delaney, and Assistants Patti Williams and Diane Hornby for their help with drafts of this document. I thank the Jessie Ball duPont Fund for making the juvenile restorative justice program possible by its program support.

care; in fact he had just been moved to a new foster care home. He had no means of support and no longer lived in the same town as the victim. Danny apologized, and although both boys agreed he had not started the fire, he stated he would try to make amends. He and the victim agreed that as restitution he would do extra chores to help his foster mother. Furthermore, Danny had received one E (for excellent) and all S's (for satisfactory) on his final report card. He agreed to try to get two E's and all the rest S grades; he also agreed to send the victim copies of his report card. The mediation ended with all the parties satisfied. The victim thanked us for mediating the conference.

The above conference is typical of the Juvenile Mediation Clinic's restorative justice conferences² provided by the University of Florida Levin College of Law and mediated by law students.³ We have established our conferencing unit as a diversionary program of the Eighth Judicial Circuit Office State Attorney's Office (SAO).⁴ Our program is unique⁵ because it brings together

² The terms mediation and conference are frequently used to refer to the same event. I will use them interchangeably in this article. See Gordon Bazemore and Mark Umbreit, *A Comparison of Four Restorative Conferencing Models*, JUV. J. BULL., (February 2001.) Four models are described, Victim-Offender Mediation, Community Reparative Boards, Family Group Conferencing and Circle Sentencing. Bazemore and Umbreit separate Victim-Offender mediations and Family Group Conferencing. Victim-Offender mediation is the meeting of the victim and offender(s) with a mediator. Conferencing includes a community of people affected by the crime...the victim, offender and their supporters. They differentiate conferencing from mediation as practiced in civil or commercial disputes "because the involved parties agree about their respective roles in the crime." Additionally, the process is not focused primarily on reaching settlement. *Id.* at 2.

See e.g. Marty Price, *Personalizing Crime*, 7 DIS. RES. MAG. 8 (Fall 2000). In Victim/Offender Mediation the mediator balances power because one party is wronged and the other is the wrongdoer. *Id.* at 10; David Lerman, *Restoring Justice*, 15 TIKKUN 14. "While the conference/dialogue has a flavor of mediation--it is run by a trained facilitator--there is a difference: there is not the 'even playing field.' Rather there is an understanding that one party has been wronged and that the other is there to accept responsibility." *Id.*

³ Law students usually co-mediate with community mediators who are Florida Supreme Court Certified County Court Mediators. These mediators have participated in additional mediation training to understand the concepts of restorative justice. Because we are grant funded, we are able to pay the community mediators at this time. However, at a later time we may have to ask them to volunteer.

⁴ Other programs receive references from prosecutors, defense attorneys, victim-witness advocates, judges, law enforcement, probation officers or victims who wish to participate. See Bazemore & Umbreit *supra* note 1, at 2. Cases may be a diversion program or referred after a formal admission of guilt has been accepted with mediation as a condition of probation or other disposition. *Id.*

In Polk County, Des Moines, Iowa, the County Attorney's Office established a program which did thousands of mediations. Frederick W. Gay, *Restorative Justice and the Prosecutor*, 27 Fordham Urb. L.J. 2 (2000). See, e.g., Marie R. Volpe, *Promises and Challenges*, 7 DIS. RES. MAG. 4 (Fall 2000).

⁵Programs such as Levin's Juvenile Mediation Clinic that offer conflict resolution training to at risk youth are beginning to appear throughout the United States. The Los Angeles County Office of Education adopted a curriculum focusing on anger management, and conflict resolution for a pilot program in two juvenile detention

many diverse elements of the community: law students, community mediators, victims, victim advocates, offenders, and parents and friends of victims and youthful offenders.⁶ The conference empowers

facilities. <http://fox.nstn.ca/~healthy/action01.html>. Other California facilities have adopted a program that focuses on the rehabilitation of juveniles. See Donna Crawford and Richard Bodine, *Conflict Resolution Education: A Guide to Implementing Programs in Schools, Youth-Serving Organizations, and Community and Juvenile Justice Settings*, Program Report, OJJDP, U.S. Department of Justice and Office of Elementary and Secondary Education, U.S. Department of Education, 48 (October, 1996).

Furthermore, many public schools have established peer programs. School-based conflict resolution programs in the United States have increased from 50 to over 5,000 in the years between 1984 and 1995. Kathryn Girard and Susan J. Koch, *CONFLICT RESOLUTION IN THE SCHOOLS: A MANUAL FOR EDUCATORS* xxv (Jossey-Bass 1996).

⁶ The Levin College of Law Juvenile Mediation Clinic was one of 26 organizations recently honored by the National Council on Crime and Delinquency for its work with juveniles. The Clinic received a New American Community Award which honors citizens and groups who see solutions and get involved.

Sixty-two law schools offer dispute resolution-related clinical opportunities, Kathleen M. Scanlon, *Background Compilations on Problem Solving and the Law School Curriculum*, CPR Inst. for Dispute Res. 22 (April 2001). However, few law schools offer similar opportunities to work with juveniles. In fact, 43% of juvenile

victims; they have a voice. Likewise, parents or guardians are also involved in a way that a more formal court process rarely allows. Here the offenders face the outcome of their crime in a very human way—across the table from the person they harmed. They have an opportunity to explain their story, apologize and devise unique and realistic repayment arrangements. Furthermore, there is no cost to any of the participants. The Jessie Ball duPont Fund currently funds the Juvenile Mediation Program through a grant to the University of Florida Levin College of Law.⁷

victim-offender programs are provided by private/nonprofit, 21% are government departments and 17% are housed within a county or state agency. Mark Umbreit, *Restorative Justice Through Victim-Offender Mediation: A Multi-Site Assessment*, W. CRIMINOLOGY R. 1 (1998).

Linda Morton and Floralynn Einesman at California Western School of Law offer a mediation program for residents at Juvenile Hall in San Diego. The law students mediate disputes between residents of Juvenile Hall. Linda Morton and Floralynn Einesman, *The Effects of Mediation in a Juvenile Incarceration Facility: Reduction of Violence Through Transformation* (available from the authors). The authors state that their research has located only two mediation programs similar to theirs—the Burnett-Bayland Home Program in Houston, Texas and the Decker Lake Youth Center Program in West Valley City, Utah. *Id.* at 5.

⁷ Our mediation clinic is funded in part by a grant from the Jessie Ball duPont Fund. Other possible sources of funding include federal funding provided by the Office of Juvenile Justice and Delinquency Prevention. Federal funds for juvenile justice are frequently provided to the individual states to provide services. See www.ojp.usdoj.gov; www.publicwelfare.org/about/fundingprog/cjprograms.html; www.foundationcenter.org; www.tgci.com

This article will explain in detail the Levin College of Law Juvenile Mediation Clinic.⁸ The article will first explain the mediation training received by the law students; then the principles of

⁸ The Levin Juvenile Mediation Clinic has a second component which also benefits juveniles within our community. The law students teach conflict resolution skills to girls incarcerated at a juvenile residential level six facility, The Halfway House, where the focus is on reform rather than punishment. We also teach students at the PACE Center for Girls. PACE is a non-residential, gender specific program for girls between the ages of twelve and eighteen. We also teach students in a local alternative school. Both the students we teach and the law students who are the teachers have found these experiences very valuable.

In their evaluations one-half of the PACE students answered yes to the question, “Overall do you feel that this program has helped you understand how to better communicate with people and avoid violent situations?”

One law student wrote:

The project at the Alachua County Halfway House was one of the most enriching class projects that I have participated in during law school...I was hesitant to go to the Halfway House. My primary hesitation was that we would not be able to connect with the girls...In reality, our interaction with the girls was

mediation and restorative justice will be discussed. Next the conference process will be described in detail beginning with the step-by-step procedures we follow, including the importance of screening to include only appropriate cases. Finally, the article will discuss evaluation of restorative justice conferencing in general and the Levin program in particular.

a truly positive experience in which we all benefitted.

Another student stated:

I was so impressed with these young women. They were intelligent, enthusiastic and genuine....These are strong girls and I admire them. I realized that most likely no one has taken the time to teach them about respect for others, and even more importantly, about self-respect. No one has taught them that conflicts can be solved in a non-adversary way, and no one has taught them that they have the power to influence others in this area.

The materials the law students use to teach have been compiled from various sources including: Sunburst Communications, "Conflict Resolution Skills" Sunburst Communications, Inc., Pleasantville, NY (1996); Colorado School Mediation Project, "Alternatives to Violence;" and MTV's 1999 campaign "Fight for Your Rights: Take a Stand Against Violence," www.mtv.com/mtv/tubescan/fight4_right/.

Although one part of this program involves teaching conflict resolution to boys, for the most part we work with girls. This is, in part, because of the increase in the number of girls involved in the justice system. "Once dubbed the 'forgotten few,' girls are the fastest growing segment of the juvenile justice population, despite a decrease in juvenile crime." Martha W. Barnett, *Women's Issues Affect All*, 87 ABA J. 10 (June 2001). "Overall delinquency cases involving girls in all racial categories increased 83% between 1988 and '97." *Id.* "Girls under 18 comprised 27 percent of all U.S. juvenile arrests in 1999, up from 22 percent in 1986. Nationally, violent crimes committed by girls rose 75 percent from 1980 to 1999." Carla Rivera, *Saving the Girls*, Gainesville Sun, July 8, 2001 at G1.

Student Training

Law students enrolled in the six credit hour Juvenile Mediation Clinic follow a sequence of steps and training as part of their clinical education. They complete 20 hours of intensive training for eligibility to become Florida Supreme Court Certified County Mediators. They also satisfy court-mandated mentoring requirements of observing four county mediations and participating in four co-mediations. Having completed all the requirements, at the end of the course they are qualified to become certified county court mediators. Concurrently, they also participate in restorative justice community conferencing. By mediating the conferences the law students improve their mediation skills and provide community service. Furthermore, each week the students meet in the seminar portion of the clinic to debrief their mediation experiences and to learn additional mediation skills. Students also write short reflection papers describing their conferencing experiences.

Mediation

Mediation is a consensual process where a neutral third party, the mediator who has no power to impose a resolution, helps the disputing parties reach a mutually acceptable solution to some or all the disputed issues.⁹ The objectives of mediation include preserving relationships, finding creative solutions, and educating parties about their responsibilities.

⁹Fla. Stat. s 44.1011(2)(2000). Florida Statutes Chapter 44.1011(2) defines mediation as follows:
(2)'Mediation' means a process whereby a neutral third person called a mediator acts to encourage and facilitate the resolution of a dispute between two or more parties. It is an informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement. In mediation, decision making authority rests with the parties. The role of the mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint problem solving, and exploring settlement alternatives.

The Florida Legislature has enacted mediation,¹⁰ and the Florida Supreme Court has adopted rules of procedure to govern the mediation process in civil, family and juvenile cases.¹¹ The legislation includes one of the most important components of mediation, confidentiality.¹² Court-ordered mediations are confidential and the Levin College program incorporates this concept into its juvenile conferences.

Restorative Justice

The relatively new practice of restorative justice emphasizes the need to provide opportunities for those most directly affected by crime (victims, offenders and communities) to be directly involved in restoring the losses incurred by the victims.¹³ The concept draws on the heritage of recent reform movements such as community correction, victim advocacy, and community policing.¹⁴

In restorative justice, crime is viewed as something done against a victim and the community, not simply a violation of state law.¹⁵ Many criminal and juvenile justice systems are based on the theory of retribution. However, retribution provided by formal court decisions often fails to involve the victims who look to the court process for catharsis and vindication. Thus crime victims feel frustrated and alienated by our current system of justice. Restorative justice is based on a new and different

¹⁰ Fla. Stat. s 44 (2000) entitled "Mediation Alternatives to Judicial Action."

¹¹ Fla. R. for Certified and Court-Appointed Mediators ss 10.100-10.900 (2000).

¹² Fla. Stat. s 44.102(3)(2001)

Each party involved in a court-ordered mediation proceeding has a privilege to refuse to disclose, and to prevent any person present at the proceeding from disclosing communications made during such proceeding. Notwithstanding the provisions of s.119.4, all oral or written communications in a mediation proceeding, other than an executed settlement agreement, shall be exempt from the requirements of chapter 119 and shall be confidential and inadmissible as evidence in any subsequent legal proceeding, unless all parties agree otherwise. This exemption is subject to the Open Government Sunset Review Act in accordance with 119.14.

¹³ See Umbreit, *supra* note 4, at 1.

¹⁴ Mark S. Umbreit, THE HANDBOOK OF VICTIM OFFENDER MEDIATION, xxix (Jossey-Bass 2001). The principles of restorative justice are consistent with tradition of the Native Americans, Hawaiians, and Maoris. Similarly, these traditions are valued by religions worldwide. *Id.*

¹⁵ See Lerman, *supra* note 1, at 1. Lerman states that one result of crime is the increased distrust and fear between people. The deeper we go into the fear, the more "we see ourselves as an isolated 'I,' vulnerable to assault.... We lost the capacity to see ourselves as part of a 'we,' because we suspect that trusting in others is naive." *Id.* Thus, a ripple effect of social isolation is created and decision making is left to others. See e.g. Nancy Hirshman, *Mediating Misdemeanors*, 8 DIS. RES. MAG. 12, Fall 2000.

philosophy and way of thinking about victims and offenders. It provides an opportunity for those most affected by crime, the victims, their families and the community, to become actively involved in resolving the conflict and to regain a sense of safety and closure. It attempts to draw on the strengths of both offenders and victims hopefully restoring relationships among members of the community. With this approach, ideally offenders take personal responsibility for their actions and victims are empowered to seek healing and repair of harm.

Victim-offender conferencing is part of the larger concept of restorative justice, and using conferencing in juvenile offender cases offers important benefits that are not found in the traditional methods of formal court adjudication.¹⁶ If the juveniles wish to participate, they must be accountable for their actions and take responsibility for the consequences. Goals may include empowering victims in their search for closure and healing, impressing on offenders the human impact of their behavior, and promoting restitution to victims. Juveniles feel supported because they can be part of the solution and help to determine their own restitution. Crime victims feel supported because they can confront their offenders, ask questions, express how they feel, and be actively involved in the justice process. Approximately 300 victim-offender mediation programs in the United States and Canada have developed from the restorative justice movement.¹⁷

Paradigms of Justice by Mark Umbreit¹⁸

RETRIBUTIVE	RESTORATIVE
Crime defined as violation of the state; thus, proxy professionals involved.	Crime defined as violation of one person by another. Value of conflict is recognized and the participants and community are directly involved.
Focus on establishing blame, on guilt, on past. Repentance & forgiveness not encouraged.	Focus on problem solving, on liabilities and obligations, on future. The victim is recognized. Repentance & forgiveness possible.

¹⁶ Victim-Offender mediation services, Dispute Resolution Center <http://www.kitsapdrc.org/voices.htm>

¹⁷ Marty Price, *Can Mediation Produce Restorative Justice for Victims and Offenders* <http://www.vorp.com/articles/crime.html> 7. About 500 programs exist in England, Germany, Scandinavia, Eastern Europe, Australia and New Zealand. *Id.*

¹⁸ Umbreit, *supra* note 11, at xxxii.

RETRIBUTIVE	RESTORATIVE
Adversarial relationship	Dialogue and negotiation
Imposition of punishment	Offenders accept responsibility and exhibit understanding of the impact of their actions. Restitution as a means of restoring both parties; goal of reconciliation/restoration.
State primarily involved	Community is involved in recognizing community responsibility for social conditions that contribute to offender behavior and in holding the offender accountable and promoting a healing response for of both victims and offenders.

Levin College of Law's Juvenile Restitution Program

We have attempted to incorporate Dr. Umbreit's basic precepts in establishing our juvenile mediation clinic's Juvenile Restitution Program. Most of our conferences occur pre-trial, although we completed a few post-adjudication conferences. In cases referred by the SAO, 51% of the offenders were Caucasian, 46% were African -American, 2% were Asian, and 1% were Hispanic. Of these, 87% of the offenders were males, 13% females. Many referrals involved multiple crimes. Burglary was the most frequent, constituting 58% of the referrals. Other referrals included criminal mischief 17%, battery 10%, theft 10%, and arson 6%.

Our Program incorporates the following basic steps: A police report is received by the SAO, the SAO decides whether it will prosecute the case and then, if they will prosecute, they screen the case for conferencing. The Juvenile Mediation Case Coordinator (Coordinator) then screens the case. If we decide to conference, the victim is notified of the opportunity, then the offender. After the participants are contacted, a time and place for the conference is established, the conference is held, concluded, and evaluations are completed. This article will explain each of these steps in detail.

1. **Police report:** Police report regarding the juvenile's action is made and referred to the SAO.

2. **SAO review:** The SAO reviews the case and determines whether the SAO will prosecute or not. If the SAO will not prosecute, the case is dismissed.

3. **Case assigned:** If the SAO decides to prosecute, a case number is assigned. Cases are then screened to determine whether conferencing is appropriate.¹⁹ The case may then be assigned to the Juvenile Restitution Mediation Program (Program), a diversionary program of the SAO. Cases considered appropriate for mediation are usually cases involving juvenile first time property offenders, petty offenses, or some batteries. Part of the screening may include the SAO determining whether the victim has sources of repayment, insurance for instance, other than restitution payments only. Cases appropriate for a conference are sent to the Coordinator. The remainder of the cases are handled by the courts.

¹⁹ See e.g., Pamela Moore, *Building Partnerships*, 8 DIS. RES. MAG. (Fall 2000).

4. **Program Coordinator screening:** The case is next screened by the Coordinator to determine if a conference is appropriate. One factor which we consider in screening is the age of the offender. We have conferenced with juveniles as old as 17 and as young as eight. Eight is too young to participate in the community jobs program, and often victims do not want to conference with children so young. However, we have found that frequently the conference itself is beneficial even to young children. Occasionally, after review, the Coordinator will determine that the case is not appropriate and decline the case. After a decline, the case returns to the SAO.

5. **Victim and offender notification and self-screening:** Once a case is deemed appropriate, the Coordinator mails both the victim and offender(s) our pamphlet and letters explaining the program. (See Exhibit A, for juveniles and Exhibit B for victims). Each pamphlet includes a screening checklist that the respective party must complete and agree to.

The Juvenile's checklist includes:

- Have you admitted the wrong doing?
- Do you want to apologize and make amends for what you did? ²⁰
- Are you willing to meet with the victim?

²⁰ Frequently the offender apologizes. See Jonathan R. Cohen, *Encouraging Apology Improves Lawyering and Dispute Resolution*, 18 ALTERNATIVES 180 (Oct. 2000), Jonathan R. Cohen, *Advising Clients to Apologize*, 72 S. CA. L.REV. 1009-1069 (1999); Daniel W. Shuman, *The Role of Apology in Tort Law*, 83 JUDICATURE 180, (Jan-Feb 2000).

Sometimes a victim forgives the offender; however, in most of our mediations there were no statements of forgiveness, just acceptance of apologies. We do not want to re-victimize the victim; therefore, forgiveness should never be expected. See e.g., Lerman, *supra* note 1, at 14. See also David M. Lerman, *Forgiveness in the Criminal Justice System: If it Belongs, Then Why Is It So Hard to Find?* 27 FORDHAM URB. J. 1663 (June 2000) (advocating for forgiveness, particularly from a prosecutor's perspective.)

John Gehm finds that forgiveness is important and does not necessarily mean condoning the offender's action. John R. Gehm, *Restorative Justice on Trial: The Pitfalls and Potentials of Victim-Offender Mediation-International Research Perspectives* 541 (Heinz Messmer & Hans-Uwe Otto eds). Rather, it may help victims go on with their lives. *Id.* at 545

- Do you want to know how the victim was hurt by what you did?
- Are you ready to brainstorm ideas and solutions to this situation?

The Victim's checklist includes:

- Are you willing to meet with the juvenile charged?
- Are you willing to work on a resolution and negotiate a settlement?
- Are you willing to share with the juvenile how this crime affected you, your business and/or your family?
- Do you know you have the right to bring a support person or victim advocate with you?
- Do you know you have a right to refuse this service and ask the State Attorney to continue with prosecution?

If both parties are able to answer yes to every item, the conference will occur. If not, the matter is referred back to the SAO for further action. In our program, we never mediate the question of whether or not the offender(s) committed the crime. The offender(s) must admit the wrongdoing. The conciliatory process extends to the restitution but not to the admission of the wrongdoing.

6. Contact with parties: The Coordinator contacts the victim first. The victim may prefer to have the matter handled by the court rather than meeting face-to-face with the offender(s). If the victim wants to conference, the Coordinator then contacts the offender(s). There are frequently multiple offenders and each party is offered the choice of whether or not to participate in mediation. Frequently not all the offenders are present because some of them prefer to have the matter adjudicated in a formal court hearing. If the victim is willing to participate, a conference takes place even if only one offender wants to mediate.

In our program approximately 50% of the victims choose to conference. Participation is a self-selecting process. Reasons for a victim's refusal include: the matter being considered trivial, fear of meeting the offender, or wanting the offender to be prosecuted and to suffer a punishment.²¹

²¹ We try to guarantee that participation by all is voluntary. This is crucial to the integrity of the victim-offender mediation process. See Stevens H. Clarke et al, *An Evaluation of North Carolina's Programs* 61, N.C. INST. OF GOV'T, (1993).

Even though we are given the arrest report which contains addresses and telephone numbers, contacting the parties is very difficult and time consuming. We first send letters (See Exhibit C), then follow up with telephone calls.²² Frequently the letters are returned because of incorrect addresses. Unfortunately, in our circuit the crime report forms do not provide a space for post office boxes which are common in rural areas. Phone calls are also difficult because often phones are disconnected or numbers are incorrect and the phone company does not have alternative listed numbers.

Even when all the participants consent, the mediation is scheduled, and reminder calls are made the night before, parties will occasionally fail to attend. The usual reason given for being a no-show is that the person “forgot.” Nevertheless, it is frustrating for the law students, community volunteer mediators, and the other parties and families when they arrive prepared to conference and then wait . . . to no avail.

To avoid this problem, another alternative is providing the conference during the arraignment or the hearing. Unfortunately, the victims are often not present at these court appearances, so restitution is negotiated between the offender and the state.²³ Generally, we choose to set a separate conference time because our SAO prefers to have the victim present, and we believe the face-to-face meeting between the victim and offenders provides a more meaningful conference.

7. Logistics of the conferences: In locating the conference, victim safety is of fundamental importance. We often conference in the courthouse because the victims have indicated they feel more

²² We do not have in person separate meetings with both the victim and offenders. Such pre-conference meetings are often recommended, Price *supra* note 15, at 2. However, we believe meaningful telephone contact(s) suffice. Because we are a pilot program with approximately 100 referrals, we have the time and resources for lengthy telephone contacts.

²³One local program subpoenas victims to appear in order to ensure their presence. We choose not to follow this procedure because we believe the telephone contact with the victim is very important to ensure their willing participation. We fear revictimization for parties who appear because of receiving a subpoena without any additional contact with the program.

protected there; for instance, all parties must pass through a metal detector, sheriff's deputies are close, and we usually reserve two separate rooms at the courthouse. Also, the courthouse environment seems to impress the offenders and their parents. When conducting battery conferences, we always begin by conferencing with the victim and offender in separate rooms. Conferences for other crimes begin with all the parties together. Then when we caucus (private meetings with both parties), we use two rooms. However, in a recent conference the mother of two offenders, brothers, wanted her children to conference in separate rooms from the third offender because she considered him the troublemaker. Therefore, the mediators and victim participated in two discrete opening statements and mediation solutions. We arranged side-by-side rooms at the courthouse to facilitate this conference. In another case we conferenced with seventeen offenders and their families, using a courtroom for the entire conference.

Occasionally, at the victim's request, we hold a conference at the victim's workplace. We try to accommodate other parties too. In one case it was very difficult for the parent of the juvenile offender to leave work to attend the conference; therefore, we conferenced in the office of the victim which was near the workplace of the offender's parent. In another case, after one group of offenders indicated going to the courthouse downtown was very costly, we decided that in the future we would predetermine if holding the conference at the courthouse was going to be a hardship for any of the parties.

8. Time and length of the conference: Timing of the conference is important given conflicting schedules of all the parties. We try to conference at a time that is convenient for everyone. Often the conferences occur during law students' scheduled class time, but we give great consideration to the parents' work schedule and the juvenile's school schedules. We frequently held the conferences in the morning which caused an unexpected problem...hunger! The only food available at the courthouse is in vending machines located on the ground floor. This became a problem when two young male offenders stated they were very hungry and declared they could not afford to purchase anything. Their mother indicated they used all their money when they took the bus to get to the courthouse. Learning from this experience, we thereafter provided juice, bottled water, and snacks such as small muffins for all the participants.

Conferences usually conclude after one hour except when there are multiple offenders participating, and then the conference may extend an additional two-three hours.

9. Conference attendees: Victims, offenders, community representatives, law students, and community mediators usually attend the conference. Occasionally an offender will be represented by an attorney who also attends the conference. All the attorneys who attended our conferences were very helpful in reaching resolution.

The majority of our conferences involved one victim; however, frequently the victim was accompanied by a family member, friend, or Victim's Advocate. When we receive the cases from the SAO, all parties and the Victim Advocate are notified. We consider the Advocate's input in our screening process. Furthermore, if either the Advocate or victim requests, the Advocate is present during the conference. Commentators have noted that Victims' Rights Advocates are skeptical of restorative justice because they are usually not consulted about conferences.²⁴ Advocates fear revictimizing the victims. Therefore, we include the Advocate in all steps of the process, and Advocates participate in many of our conferences.

Because of scheduling complications, at times we used one community mediator only. However, in most cases our conferences included a community mediator and at least one law student. On other occasions we paired two law students so that one was the main mediator, and the other handled the paperwork. We believe it is beneficial to have at least two co-mediators at all times. This is true for the obvious reason that two heads are frequently better than one. However, co-mediators are also helpful because of the amount of paperwork that must be completed which increases greatly when there are several juvenile offenders. One law student wrote of his conference, "What made it very difficult for me was the fact that there were so many people at the table: four offenders, three parents, the victim, and a victim's advocate. Maintaining control of the group was an extremely tough job in itself!"

11. How the conference is conducted: The conference begins with the offender(s) signing a waiver of speedy trial form (Exhibit D). The offender(s) and the victim then sign a form granting the mediator immunity from suit²⁵ and guaranteeing the confidentiality of the process. (Exhibit E). In

²⁴ See Patrick Boyle, *For Youth Offenders, It's Payback Time*, YOUTH TODAY 42, 44 (May 2001).

²⁵ See Fla. Stat. s 44.107 (2001) entitled. "Immunity for arbitrators and mediators." This statute provides

Florida, immunity and confidentiality are provided by statute in court ordered mediations²⁶; however, because they are not court ordered mediations, victim-offender conferences do not fall within the ambit of these statutes. Therefore, we require the parties to provide immunity and ensure confidentiality of the process through separate contracts signed in the presence of all parties at the beginning of the mediation.

that “a mediator appointed under s.44.102 shall have judicial immunity in the same manner and to the same extent as a judge.” *Id.* Because our restorative justice mediations are not court ordered, we extend these statutory protections by contract.

²⁶ See Fla. Statutes s 44.102(3) *supra* note 10.

The mediator then completes the opening statement and the parties explain their interests. The opening is followed by story-telling, clarification of facts, sharing feelings and generating options. The victim and offender begin to share the human, interpersonal dimension of the criminal behavior. The juveniles often recognize that thoughtless acts hurt others. Victims can verbalize the physical and emotional impacts of the offenders' actions; they often have questions which only their offender can answer. The victim may ask the juvenile offender questions they have struggled to understand such as: "Why would you want to harm me or my property?" "What made you target me over others?" "How can I be sure that you won't do this again?" "Should I be afraid of you?" Often when victims convey their concerns, healing begins.²⁷ Furthermore, the juvenile offenders are encouraged to participate with the victim in determining the consequences of their actions.²⁸

12. Conference conclusion: Upon conclusion of the conference, the Agreement is signed by all parties. The Agreement may find the juvenile offender offering a formal apology, writing an essay showing that the juvenile gained insight from the experience, entering into a behavior contract with their parent or guardian, agreeing to participate in education or treatment to address the offender's needs, accepting restrictions on personal freedom, agreeing to perform community service that may be meaningfully related to the victim or traditionally arranged by a court, agreeing to perform a service for the victim or making a monetary payment.

In many of our cases the offenders apologized; they were frequently remorseful and wanted to right their wrongs.²⁹ If they didn't, their parents did. Some apologies were preceded by the parents

²⁷ Victim-Offender Mediation: Paradigm Shift or Old-Fashioned Accountability.
http://www.comunitypolicing.org/publications/comlinks/cl_5/c4_crow.htm

²⁸ Conferencing may be especially beneficial in family cases. For instance, a young woman had vandalized her older brother's car. He had no faith in his parents disciplining her; therefore, he pressed charges. However, at the time of the conference he was giving his sister driving lessons, but felt he could not have a good continuing relationship with her.

nudging them and saying, “Don’t you have something to say?” or “Apologize to....” In one of our battery mediations, the mother of the victim demanded a written letter of apology explaining why the offenders battered her son.

Frequently, an apology was not enough to repair the harm and in these cases the forms of restitution varied. Some offenders agreed to work for the victim to repay the damage they caused. Some victims did not want contact with the offenders so they agreed to another form of restitution such as community service hours or Project Payback.

Project Payback is a local program administered by the SAO that provides jobs for youthful offenders.³⁰ (See Exhibit F) Similar programs are found throughout the United States. For instance, in Orlando, Florida, teens mow lawns for the state transportation department, or they may choose to work in Winn Dixie or Taco Bell to earn money to pay their victims.³¹ In Pittsburgh, juvenile offenders in the Cornell-Abraxis WorkBridge take classes in anger management and victim impact or take vocational training in occupations such as plumbing, carpentry and masonry to learn skills so they can repair crime damage.³² In Oregon, youth work on constructing a homeless shelter and domestic abuse crisis center.³³

We find that a combination of apology and payment is the frequent solution.

One student described such a conference as follows:

This was the most rewarding one I have conducted so far. It involved two offenders who broke into a day care center and set off the fire extinguishers inside the building; the damage was about \$400 or so. But the victim, the owner and operator of the day care center, was very emotionally affected by the crime. Once they were all in the room together, both juveniles apologized to the victim and assured her that they wanted to make things right.

The most striking thing was the cathartic affect (sic) that the mediation produced for both the offenders and the victim. I truly believed the two boys were sorry for their actions. In addition, I truly believed that the victim felt comfortable

³⁰ Project Payback is operated by the SAO and funded by a state juvenile justice grant. The juvenile offenders may work at a social service agency, their work hours are then reported to Project Payback, and the victim’s restitution payment is paid by the Office.

³¹ Umbreit, *supra* note 4, at 1.

³² See Boyle, *supra* note 20, at 42.

³³ *Id.*

accepting their apologies. I left feeling that this was the way conferencing was supposed to work, with everyone leaving feeling better about the entire situation.

If the participants cannot reach agreement, the case is declined and referred back to the SAO. (See Exhibit G for decline form). The result of the mediation is reported as “no agreement.” Because of confidentiality in mediation, nothing more is reported or shared.

13. **Post-mediation:** The agreement is either sent to the SAO or retained by the Levin program to monitor compliance. Monetary restitution agreements may be monitored by Project Payback, or the juvenile offenders may pay a specific dollar amount directly to the victim in a lump sum or through scheduled payments. If the juvenile offenders fail to comply with the conference Agreement, we send a warning letter. (See Exhibit H) If the juvenile continues not to comply, the case is re-mediated or we decline the case and return it to the SAO for referral to the court system. If the juvenile complies with all conditions of the Agreement, the SAO usually records it as a successful completion of a diversionary program and the case is closed.

14. **Evaluation:** In trying to conduct an objective evaluation of our program, we first consider evaluation criteria such as agreement rate. We observe the very high agreement rates both nationally and from our own statistics. Next we examine agreement compliance and recidivism rates that are employed nationally and that we hope to employ in the future. We then compile our program’s overall very positive results of evaluations completed by the participants at the close of the mediations. Finally, we discuss the benefit of juvenile restorative justice conferences for the law students.

A. Agreement Rate

In a national study of 1,153 cases, 91% of the crime victims and 81% of the offenders who voluntarily mediated reached agreement in 95% of these cases.³⁴ Likewise, our Clinic had a high rate of success; 98% of the participants in conferences reached agreement. Many of these agreements included monetary restitution or service to the victim.

B. Agreement compliance

³⁴ Mark Umbreit and R. Coates, *Victim Offender Mediation: Analysis of Programs of Four States of the U.S.* (Minneapolis: Minnesota Citizens’ Council on Crime and Justice, 1922).

The Juvenile Mediation Clinic is developing a survey instrument to measure the results for juveniles who participate in our program with a matched group who did not. We tracked successful completions; most of those who reached agreement in the conferences mediated through our program have complied with the solutions agreed upon in mediation. Moreover, one study found that offenders who negotiated restitution agreements through conferencing were “significantly more likely to complete their restitution than similar offenders who were ordered” to pay by the court³⁵

C. Recidivism

We plan to measure the impact our conferences have on the number of young offenders involved in the system and the recidivism rate of juveniles who participate in conferences.³⁶ Other studies have, however published such statistics. A study of more than 6,300 juvenile probation cases in Utah found that youths who paid their restitution returned to court “significantly less often than juveniles who did not.”³⁷ A study by Mark Umbreit, executive director of the Center for Restorative Justice & Peacemaking at the University of Minnesota, found that recidivism was one-third less for youths who participated in restorative justice.³⁸

Most also included apology, an outcome that is very important to most victims.

D. Participant Satisfaction

Participant satisfaction is another very important measure for victim-offender conference success. The voluntary nature of participating in the conferencing is a self-selecting factor that overlays

³⁵ Umbreit, *supra* n. 12, at 211.

³⁶ *See e.g.* Boyle, *supra* note 20, at 45.

³⁷ *Id.*

³⁸ *Id.*

the high levels of satisfaction reflected in our evaluations. In a national survey, 83% of victims surveyed in 1998 were satisfied with the way in which the juvenile justice process dealt with their experience.³⁹ In that survey, 92% of young offenders reported satisfaction and 90% of the parents reported satisfaction.⁴⁰

Our program also had positive evaluations. We conducted evaluations at the end of conferences. Participants were asked to check boxes for ten questions and indicate whether they agree, strongly agree, were neutral or disagree or strongly disagree. We realize this is not a refined survey instrument, but it provides an indication of overall satisfaction. The results are as follows.

Victims:

100% of the victims who completed the survey agree or strongly agree that:

- I was provided with a clear understanding of the mediation process prior to, or at the beginning of the mediation.
- I feel that mediation was an appropriate alternative to criminal prosecution.
- I am satisfied that the mediator did everything possible to bring about a settlement.
- My concerns were adequately addressed during the mediation.
- Mediation was preferable to going to trials.
- I was treated fairly during the mediation.
- I am satisfied with the results of the mediation.

Victims responded mostly with strongly agree or agree, but with a few “neutral” responses to the following: “I am pleased to have had the opportunity to engage in mediation,” “I did not feel pressured to participate in mediation” and “if another problem arose, I would like to participate in mediation again.”

³⁹ Juvenile Justice Teams <http://www.moj.wa.gov.au/division/offend/3.htm>. See also Bazemore and Umbreit, *supra* note 1, at 3. (79% of victims satisfied if mediated versus 57% is standard court process.)

⁴⁰ See Juvenile Justice Teams, *supra* note 38.

Offenders:

100% of the offenders who completed the survey responded agree or strongly agree to the following:

- I was provided with a clear understanding of the mediation process prior to, or at the beginning of the mediation.
- Mediation has helped me understand the impact of my actions on the victim.
- I am grateful to have had the opportunity to engage in mediation with the victim.
- My concerns were adequately addressed during the mediation.
- Mediation was preferable to going to trial.
- I was treated fairly during the mediation.
- I am satisfied with the mediation.

Most offenders answered agree or strongly agree to, “I did not feel pressured to participate in mediation.” One answered neutral. Most answered strongly agree or agree to “I am satisfied the mediator did everything possible to bring about a settlement;” However, one answered “disagree.” And most answered agree or strongly agree to “If another problem arose, I would like to participate in mediation again.” One answered strongly disagree. (See Exhibit I)

E. Law Students

The Juvenile Mediation Clinic helped law students improve their mediation skills. Also, perhaps as an unintended positive side effect, the Clinic exposed law students to segments of the community that were unfamiliar. The law students who participated in the restorative justice program reflected in their papers that they had a positive experience. One student stated,

In general, my experience in the restorative justice program has been fantastic. I've been able to apply and develop mediation skills in a variety of situations. I also felt the mediation process was a preferred alternative for all participants. I have learned much, and have felt the reward of helping the community.

Conclusion

The Juvenile Mediation Clinic at the Levin College of Law through its juvenile restorative justice conference program provides an enriching experience for the community, law students, victims, and

juveniles served. The Clinic is unique in its service to juveniles. In the words of Kahlil Gibran, we hope to help these juveniles become “strong arrows that will go swift and far upon the path.”

